5-2-1872

# Territory of Oklahoma.

42D CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 61.

# TERRITORY OF OKLAHOMA.

MAY 2, 1872.—Ordered to be printed.

Mr. ISAAC C. PARKER, from the Committee on the Territories, made the following

## REPORT:

[To accompany bill H. R. 2635.]

*The Committee on the Territories, having had under consideration House bill 2635, beg leave to report an amendment, in the nature of a substitute for the same, to the House, with the recommendation that it do pass.*

In making this recommendation the committee desire to state, that, under existing treaties with the several tribes of Indians inhabiting the territory embraced in the boundaries mentioned in this bill, they are unable to see anything which substantially conflicts with its provisions. They believe that it may change somewhat the policy heretofore pursued by the Government toward the Indian. That there is a necessity for that change no one can doubt. The mode of effecting that change is one of the gravest subjects which can be presented for the consideration of Congress. Your committee have found it a problem surmounted with difficulties of no ordinary magnitude, but they believe they have finally agreed upon a bill which, if it becomes a law, will confer the blessings of security and protection upon the Indian; that it will enable him to avail himself of the full measure of that protection of law which is necessary for the existence of civilized life, and with much greater reason can it be said to be necessary for the protection of the Indian. The necessity of bringing him under christianizing and civilizing influences has long been felt by those who have given the subject any consideration, and that necessity is now immediate and pressing; and no one can doubt that, in the near future, the Indian must accept either civilization or extermination. It is believed he can receive the first; that the latter should be his fate is to be deplored by all good men.

The object proposed by this substitute reported by the committee is to provide a limited territory, of reasonable extent, within which all the Indian tribes which now stand in the way of the civilization of the country can be gathered. As an inducement, it is proposed to organize them under a territorial government, which shall be placed under their own control, so far as is consistent with the maintenance of the national sovereignty and the interests of the nation at large. It will be remembered that, on the 27th of September, 1866, a part of the semi-civilized tribes inhabiting the country within the boundaries mentioned in this bill adopted what is known as the Ocmulgee constitution. The committee have endeavored to conform this bill to that constitution, so far as it could be done without sacrificing any important interests of the Government. The general purpose of this constitution was to confer the benefits of civil government upon the Indians; and by this act of theirs they admit not only the necessity but the good policy of some

form of civil government to regulate their domestic affairs and to place them in a position of greater security, at least until the conflict between savageism and civilization shall be settled by the triumph of the latter.

We do not believe it good policy to organize this Territory with such extended privileges as to leave to the Indians nothing to be desired in the organization of a State; therefore we do not believe it good policy to give to these Indians such an organic act as was contemplated by them when they proposed for the acceptance of Congress the Ocmulgee constitution, which contemplated the establishment of a territorial government, which possessed sovereign power, with the right to elect its governor, with no power left to Congress to supervise its legistation, and the citizen living under it being required, when he accepted an office in the Territory, to swear allegiance to the Ocmulgee constitution only, instead of to the Constitution of the United States. We believe that a civil government for this Territory ought, as far as possible, to conform in its general character to other territorial governments. The bill reported by the committee declares that the governor and secretary, who, in his absence or disability, may act as governor, shall be appointed by the President, by and with the consent of the Senate. It asserts the ordinary right of supervision by Congress over territorial legislation. It provides for the appointment in the usual manner of the judges of the United States courts. It provides for a Delegate in Congress; it however leaves to the Territory the right to establish a local judiciary; it does not seek to interfere with the local affairs of the Territory, nor does it in terms destroy the tribal organizations within this Territory, but only subordinates them to the proposed organic act. It provides that, in all appointments therein provided for, preference (qualifications being equal) shall be given to competent members of the Indian nations or tribes lawfully within the said Territory, the object being to encourage them to acquire the experience necessary for the duties of office and civil government in said Territory. The Territory embraced in this bill comprises, as nearly as can be ascertained, 41,691,186 acres, or 65,142 square miles. It is bounded on the north by the southern boundary of the State of Kansas, on the west by the eastern boundary of the Territory of New Mexico and the State of Texas, on the south by the northern boundary of the State of Texas, and on the east by the western boundary of the States of Arkansas and Missouri. There is at present within it a population of about 70,369 Indians. The Government, heretofore, has always endeavored to keep the Indians and the whites who surrounded them separate. The question at this time may be pertinently asked if this policy can be continued. It is hopeless to expect that civilization and all its attendant blessings and benefits will stop on the borders of a barrier so fragile and so opposed to the progress of the times and the demands of the age.

It is a conclusion already demonstrated that, whether right or wrong, these Indian lands will become the abode of civilization. Over all these lands, wholly indifferent to the rights of the Indians, some attracted by the allurements of soil and climate, some by a restless spirit of adventure, some by a feverish spirit of speculation, will very soon spread a hardy, daring, and determined pioneer population. Can the Indian, protected by his tribal organizations and Indian governments alone, stand against this wave of civilization which will follow the advent of the white man? Have they done so in the past? Has the Government even ever been able to so restrain the encroachments of white settlers upon the rights of the Indians as to leave those rights unimpaired? If

the rights of the Indian have been trampled upon in the past, if he has been ruthlessly and wantonly driven from his reservation without adequate remedy in the past, how much more apt is it to be done in the country sought to be organized into a Territory by this bill in the future, when we remember that this country will be very soon traversed by numerous lines of railroad which will intersect, divide, and subdivide the country, and which railroad companies have a right, under the treaties with the several tribes inhabiting it, to have their operatives live along their lines in said country. Besides, although the rights of the Indian should be held sacred by the Government, are there not some rights belonging to white men that the Government is bound to respect? Does any one believe that the Indian governments now in this Territory will prove adequte in the future for the protection of either the whites or the Indians? It will be remembered that these lines of railroad are to connect the other States with New Mexico, Texas, Arizona, and the Pacific coast. Hundreds and thousands of travelers will soon pass over these lines of road; millions of pounds of freight will cross this country upon the cars. Thousands upon thousands of beef-cattle will be brought by them from the fertile plains of Texas. What agency is now sufficient in this country to protect the lives of our citizens as they may pass through these reservations? What security will this property of these citizens have while it may be in transit for a distance of three hundred miles across this country? Must they rely alone upon Indian tribal organizations and Indian government for safety and protection? If so, will their demands be satisfied, especially when such demands will be confronted with the non-intercourse laws now in existence? It is a foregone conclusion that the better security of the Indians and the safety of the whites demand some other system of government for that Territory than the one now in existence there. We believe the remedy is afforded by the substitute as reported by the committee. This bill will have the effect to consolidate the tribes, and will be the initial and final means for the civilization of the Indians and of raising them to the dignity of American citizenship, and thus put in their own hands weapons (in the shape of ballots) for their own protection, more potent than all the treaties which have ever been made with them. The lands in this Territory are held by the several Indian tribes in common. Several of these tribes have patents for them from the Government of the United States, issued to them in pursuance of treaty stipulations with them, guaranteeing these lands to them, their heirs, and successors forever, provided, that such lands shall revert to the United States, if the Indians become extinct or abandon the same. This is substantially the granting clause and pledge of the Government, contained in all the treaty stipulations made with the several tribes inhabiting this Territory. While the phraseology of the clauses defining and assuring the title of the tribes to their lands is exceedingly various, the intent of the same is identical. That of May 6th, 1828, to the Cherokees, is as follows:

"The United States agree to possess the Cherokees, and to guarantee it to them forever, and that guarantee is hereby solemnly pledged, of" seven million acres of land, &c. (7 U. S. Stats., p. 311.)

That of 1835 (from which alone the Cherokees derive title to the western half of their reservation) is:

"In addition to the seven million acres of land thus provided for and bounded, (referring to former treaty,) the United States further guarantee to the Cherokee Nation a perpetual outlet west, and a free and unmolested use of all the country west of the western boundary of said seven million acres, as far west as the sovereignty of the United States

and their right of soil extend." * * "The United States also agree that the lands above ceded by the treaty of February 14, 1833, including the outlet and those ceded by this treaty, shall all be included in one patent, executed to the Cherokee Nation of Indians by the President of the United States according to the provisions of the act of May 28, 1830." (7 U. S. Stats., p. 480.)

The statute of 1830, referred to, after authorizing the President to exchange with Indians eastern lands for lands west of the Mississippi, in the 3d section, provides:

"That in the making of any such exchange, it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made that the United States will forever secure and guarantee to them, their heirs, or successors, the country so exchanged with them; and, if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: *Provided always*, That such lands shall revert to the United States if the Indians become extinct or abandon the same." (4 U. S. Stats., p. 412.)

In the original Choctaw treaty of September 17, 1830, the granting clause is as follows:

"The United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract or country west of the Mississippi River, in fee simple, to them and their descendants, to inure to them while they shall exist as a nation and live upon it, beginning," &c., describing present reservation. (7 U. S. Stats., p. 333.)

In the subsequent treaty of 1855 it was provided that the Choctaws could, if they wished, have a patent under the law of 1828.

The assurance to the Chickasaws is substantially the same as that to the Choctaws. With reference to the Creeks, the language is as follows, (treaty of 1832, Art. XIV:)

"The Creek country west of the Mississippi shall be solemnly guaranteed to the Creek Indians, nor shall any State or Territory ever have a right to pass laws for the government of such Indians; but they shall be allowed to govern themselves, so far as may be compatible with the general jurisdiction which Congress may think proper to exercise over them; and the United States will also cause a patent or grant to be executed to the Creek tribe, agreeably to act of Congress of May 28, 1830." (7 U. S. Stats., p. 368.)

The treaty guarantee of the Seminoles is the same as that of the Creeks.

The title of the Senecas and Shawnees is assured in the treaty of July 20, 1831, as follows:

"The lands granted by this agreement and condition (reservation in Indian Territory) to the said band of Senecas and Shawnees shall not be sold or ceded by them, except to the United States; and the United States guarantee that said lands shall never be within the bounds of any State or Territory, nor subject to the laws thereof; and, further, that the President of the United States will cause said tribes to be protected at their new residence against all interruption or disturbance from any other tribe or nation of Indians, or from any other person or persons whatever; and he shall have the same care and superintendence over them in the country to which they design to remove as he has heretofore had over them at their present place of residence." (7 U. S. Stats., p. 353.)

In the Quapaw treaty of April 12, 1834, the clause is:

"The United States agree to convey the same (lands above described) by patent to them and their descendants, so long as they shall exist as a nation and continue to reside thereon." (7 U. S. Stats., p. 425.)

In the treaty with the Sacs and Foxes, February 18, 1867, the language is:

"The United States agree, in consideration" * * * "to give to the Sacs and Foxes, for their future home, a tract of land in the Indian Territory," &c. (15 U. S. Stats., p. 496.)

With the Kiowas and Comanches, in treaty of October 21, 1867, the language is:

"The United States agrees that the following tract of country, to wit," * * * "shall be, and the same is hereby, set apart for the absolute and undisturbed use and occupation of the tribes hereafter named." * * * "And the United States now solemnly agrees that no persons, except those herein authorized to do so, and except such officers, agents, and employés of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article, or in such territory as may be added to the reservation for the use of said Indians." (15 U. S. Stats., p. 382.)

The language in treaty with Cheyennes and Arapahoes, October 28, 1867, is identical with that last quoted.

While it may be believed by every one that it would be better for the Indian to hold his lands in severalty, and have the absolute fee-simple title to a reasonable amount of the same, and that the remainder should be released from the Indian title and possession and opened to white settlement, and although the law-making power of the nation may have a right to break down any title the Indians may have in these lands, by passing laws subsequent to the date of the several treaties, yet for Congress to do so, as a mere act of sovereign power, would be a violation of the plighted faith of the nation, alike in conflict with its dignity and the guaranteed rights of the Indians.

We are aware that it is now claimed by some that Congress has no power, without a violation of the treaties, to establish this territorial government; while others assume that there is no validity attaching to any treaties made with Indians purporting to set apart a portion of the public lands for their exclusive occupation, and they would maintain that all such lands, not occupied by actual white settlers, are as much open to selection under the pre-emption laws as if no such treaties had been made.

It is important, in this connection, to note the distinction between the rights of property and the right of sovereignty. The first are defined and became vested according to the terms of the grant; the second is inalienable, and rests in the discretion of the Government, to be exercised without let or hinderance over any part of its territory; and every provision of a treaty with the tribes purporting to restrain its exercise would be void. The law-making power of the country has no such power conferred upon it by the people of this nation as to enable it to carve out from the midst of the public domain a portion of territory which shall be exempt from its governmental control. Such power has never for a moment been conceded, as respects a foreign state, to the President by and with the consent of the Senate, as within the treaty-making power, nor can it be claimed to be within the power of Congress. To claim it for the Indian tribes is little less than absurd.

Then should we not protect their rights of property according to the terms of the contract with them and govern them as the interests of

themselves and the nation at large may demand? The nation should stand by her plighted faith with these Indians; and although the demands of civilization and the true interest of the Indian require that this country should be opened to white settlement as speedily as possible, as a preliminary step to this the Government should obtain a retrocession of the land she has conveyed, upon the best terms she can procure.

The territory now in possession of the several tribes which are sought to be brought under the control of this organic act is a part of the Louisiana purchase, by which both soil and sovereignty passed to the United States. The sovereignty has since that time remained in the Government. The title has been incumbered with the several conveyances of the same made to the Indians, and although this Indian title may not be equal in dignity to a fee-simple, yet it ought not to be held any less sacred in character because it is not of the highest nature. It is entitled to the full measure of protection, notwithstanding it may be inferior in its character. The several reservations in this territory were given to the tribes of Indians inhabiting them for lands held by them, in like manner by treaty, as reservations at the time of the exchange. It will not do to say that the Government of the United States can receive title from the Indians by treaty, but the Indian can receive no title from the Government by a like treaty. If he can convey his title to the Government, he should receive a title from that Government. We have always recognized his right to convey to us by treating with him and securing a conveyance of his lands east of the Mississippi River in exchange for the very lands constituting the Territory of Oklahoma. The Government, by its treaties with these Indians, has always recognized the principle that the Indian had some kind of title to the lands occupied by him; if not, why treat with him for them? Any other position would be dishonorable and disgraceful to the Government, and not in harmony with the opinions of the courts. It cannot be denied that the courts have always recognized the Indian title as claimed by him under treaties made with the Government. This doctrine is clearly established in the case of Johnson and Graham, lessee, *vs.* William McIntosh, (8 Wheaton, p. 543;) in The Cherokee Nation *vs.* the State of Georgia, (5 Peters, pp. 1–48;) in Martin *vs.* State of Georgia, (6 Peters, p. 580;) in United States *vs.* Clark, (6 Peters, p. 168;) in Worcester *vs.* The State of Georgia, (6 Peters, p. 515.) In the case of Peterson *vs.* Jencks, (2 Peters, p. 216,) and in the case of the Kansas Indians, (5 Wallace, p. 737,) it is said "rules of interpretation favorable to the Indian tribes are to be adopted in construing our treaties with them."

We think no one can doubt that the general sovereignty of the Government, which, for public reasons and the public good, is exercised over the persons and property of the nation, is a power wholly distinct and separate from that which deals with adverse claims of title and personal property. The one attaches to the soil and to the people as an inalienable attribute, inherent in the very nature of government. The other is a mere question of vested rights, dependent upon the true construction of the instruments of title under the Constitution and laws. We do not believe the Government will, in time, have any insuperable difficulty in obtaining a voluntary retrocession of all the lands in this territory not needed by the Indian for actual occupancy, upon paying him a fair compensation for the same; and we are free to say that we do not believe that they should be reacquired by the Government in any other way. We believe that, under the salutary influence of this territorial government, the Indian may soon become convinced that his true interest is to keep pace with the

progress of civilization, to hold his lands in severalty, to more thoroughly improve and cultivate the same, and relinquish his title, upon just compensation, to the Government to all not required by him, that the same may become the abode of his white neighbor, who will assist him in acquiring the arts of peace, in the improvement of his country, and teach him that he can become a citizen, with all the rights and blessings of citizenship. We believe this is the only solution of this vexed question which is in harmony with the treaties made with these several Indian tribes, as they have always been construed both by the Indians and the Government. We do not hesitate to declare that the Government, in the exercise of its right of eminent domain, can appropriate any lands covered by Indian reservations when the public use requires it, but it must be upon just compensation. Nor do we doubt the power of Congress to declare the necessity of settlement, the suppression of disorder within the Territory, and the general pacification of the border a sufficient public use to justify such appropriation; but we are equally clear the exercise of such power would involve a repeal or violation of all the treaties made with these Indians. We doubt the good faith as well as good policy of such a course as this on the part of Congress, but prefer rather to give the Indian a civil government, created directly by Congress, trusting to the near future for a settlement of the question of white occupancy. We believe the question is one which calls for the exercise of the sound discretion of Congress, dealing with the rights of the Indians as they would deal with the rights of other persons, according to a just, reasonable, and fair interpretation of the contract made with them, subject to all the restrictions, limitations, or conditions which attach to the grant, and constantly bearing in mind that, if these Indians occupy to the Government the relation of a ward to a guardian, as is claimed, we must carefully and jealousy guard the interests and rights of the ward, even against the demands that are being made from every quarter, that this country shall be opened to sale and settlement by the white man.

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